



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,451	04/14/2000	Charles Bluth	M-8231 US	8923

24251 7590 11/22/2002

SKJERVEN MORRILL LLP  
25 METRO DRIVE  
SUITE 700  
SAN JOSE, CA 95110

EXAMINER

ASTORINO, MICHAEL C

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/549,451	BLUTH ET AL. <i>Ch</i>
	Examiner	Art Unit
	Michael Astorino	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 21 August 2002.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-38 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-38 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6, 11.      6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

The examiner acknowledges the amendment filed August 21, 2002, wherein claims 1-37 are pending.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5, 7-16, 19-23, 24-26, 28, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (US 5,867,821 A) in view of Reber et al. (US 5,961,451 A).

Ballantyne et al. discloses a controller with a display (6, 8, 10), local storage coupled to the controller (column 4, lines 4-15), a health test interface (column 1-2, lines 65-62) and communications interface (figure 1), a measurement interface (column 10), a smart card (columns 10-11, lines 58-11), a kiosk (216), a remote server (column 2, lines 5-12), a medical library (2), and electronic-commerce for purchase capabilities (column 2).

However Ballantyne et al. does not disclose logic for controlling a health care interface that performs measurements on a user. Albeit, Ballantyne et al. does disclose that measured data is recorded on the interface. Moreover, Reber et al. a reference in an analogous art discloses a glucose monitoring apparatus wherein the sensor and housing transmits data to an external device (e.g. a personal digital assistant) which is capable of transmitting data to a communication network (column 4, lines 42-55). It would have

been obvious to one in the art at the time of the invention to combine the electronic wellness information system of Ballantyne et al. with the sensor/measuring device of Reber et al., because the system would be more effective due to increased accuracy of measurements during hospital stays and home use. Furthermore, because the system would be electronically automated there is less of a chance of human error. The result of lowering error when taking a physiological measurement would cause system to distribute more accurate information to the patient.

3. Claims 1, 4, 6, 17-18, 27, 29 and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (US 5,867,821 A) in view of Cosentino et al. (US 6,290,646 B1).

Ballantyne et al. discloses a controller with a display (6, 8, 10), local storage coupled to the controller (column 4, lines 4-15), a health test interface (column 1-2, ones 65-62) and communications interface (figure 1), a measurement interface (column 10), a smart card (columns 10-11, lines 58-11), a kiosk (216), a remote server (column 2, lines 5-12), a medical library (2), and electronic-commerce for purchase capabilities (column 2).

However Ballantyne et al. does not disclose logic for controlling a health care interface that performs measurements on a user. Albeit, Ballantyne et al. does disclose that measured data is recorded on the interface. Moreover, Cosentino et al. a reference in an analogous art discloses a weight monitoring apparatus (18) wherein the sensor and housing transmits data to an external device (55) which in turn transmits data to a remote computer (32). It would have been obvious to one in the art at the time of the invention

to combine the electronic wellness information system of Ballantyne et al. with the scale of Cosentino et al., because the system would be more effective due to increased accuracy of measurements during hospital stays and home use. Furthermore, because the system would be electronically automated there is less of a chance of human error. The result of lowering error when taking a physiological measurement would cause system to distribute more accurate information to the patient.

In regards to claims 4, 17, 27, and 37 wherein blood pressure is the physiological measurement to be taken. Cosentino et al. discloses that blood pressure among other physiological measurements can be substituted (column 5, lines 1-9) for the scale (18).

#### *Response to Arguments*

4. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

MA  
November 5, 2002



MAX F. HINDENBURG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700